

IN THE MATTER OF

GRIFFIN SYSTEMS, INC., ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9249. Complaint, Oct. 8, 1991--Final Order, April 29, 1994

This final order prohibits the respondents from making misrepresentations about any material terms or conditions of any automobile service contract, from canceling service contracts when they have not disclosed that they have a right to do so before selling the contract, from substantially hindering customers from performing a condition on obtaining a benefit, from denying valid claims, and from refusing to comply promptly with any term or condition of any service contract they sell. In addition, the order requires the respondents to disclose to potential buyers whether the contracts cover the full cost of repairs, whether they include a rental car allowance, and the number and total dollar value of claims that may be submitted.

Appearances

For the Commission: *Lawrence M. Hodapp.*

For the respondents: *Philip Z. Vogel, Cleveland, OH.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Griffin Systems, Inc. ("Griffin"), a corporation; and Gennaro J. Orrico, Robert W. Boughton and Alfonso S. Giordano, individually and as officers of said corporation (hereinafter collectively referred to as "respondents"), have violated certain provisions of said Act in states where their practices are not "regulated by State law" as the "business of insurance" within the meaning of 15 U.S.C. 1012(b), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Griffin is an Ohio corporation with its office and principal place of business located at 4019 and

4101 Prospect Avenue, Cleveland, Ohio. Respondent Griffin also does business from offices located at 741 and 745 U.S. Highway 1, North Palm Beach, Florida.

Respondent Gennaro J. Orrico is the current president of Griffin. Respondent Robert W. Boughton was the president of Griffin from the date of Griffin's incorporation through an undetermined time in 1988 or 1989, when Mr. Orrico became president. Respondent Alfonso S. Giordano is the executive vice president and treasurer of Griffin.

Individual respondents Gennaro J. Orrico and Alfonso S. Giordano have their offices and principal places of business at 741 and 745 U.S. Highway 1, North Palm Beach, Florida. Said individual respondents also do business from the Cleveland office of respondent Griffin. Individual respondent Robert W. Boughton currently resides in Hato Rey, Puerto Rico.

At all times relevant to this complaint, the individual respondents have formulated, directed and controlled the acts and practices of respondent Griffin, including the acts and practices hereinafter set forth. The individual respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents for some time in the past have been engaged in the promotion, marketing and sale of vehicle service contracts to new and used vehicle buyers. Respondents also are now and for some time in the past have been engaged in the administration and payment of claims submitted by consumers pursuant to those service contracts.

PAR. 3. At all times relevant to this complaint, respondents have maintained a substantial course of business, including the acts and practices set forth herein, in or affecting commerce, as "commerce" is defined by the Federal Trade Commission Act.

PAR. 4. During the course and conduct of their business, respondents have disseminated and caused the dissemination of promotional materials for their service contracts by various means in and affecting commerce, including direct solicitations distributed by the mail and across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said service contracts. Among these promotional materials are the documents attached as Exhibit A.

PAR. 5. Through the promotional materials discussed in paragraph four, respondents have represented, directly or by

implication, that respondents' service contracts fully protect consumers against repair costs and that respondents reimburse purchasers of their service contracts for the full cost of repairing or replacing the enumerated "covered parts" of the consumers' vehicles.

PAR. 6. In truth and in fact, respondents' service contracts do not fully protect consumers against repair costs, and respondents do not reimburse purchasers of their service contracts for the full cost of repairing or replacing the enumerated "covered parts" of the consumers' vehicles. Instead, in numerous instances respondents pay for only a portion of said repair or replacement costs. Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the promotional materials discussed in paragraph four, respondents have represented, directly or by implication, that purchasers of respondents' service contracts are paid a rental car allowance if, due to a mechanical breakdown of a covered part eligible for payment, the consumer's vehicle has to be kept overnight at a repair facility.

PAR. 8. In truth and in fact, respondents' service contracts impose significant limitations on the rental car allowance, including, but not limited to, limiting said allowance to the actual working time on the repair of the vehicle, excluding all time in which the repair facility waits for parts or for any other delays beyond the control of the repair facility, and only paying such allowance if the total repair time on the vehicle is eight hours or more. In light of the representations set forth in paragraph seven, the respondents' failure to disclose these significant limitations on the rental car allowance is misleading and deceptive.

PAR. 9. Through the promotional materials discussed in paragraph four, respondents have represented, directly or by implication, that purchasers of respondents' service contracts may submit an unlimited number of claims pursuant to those contracts.

PAR. 10. In truth and in fact, purchasers of respondents' service contracts may not submit an unlimited number of claims pursuant to those contracts. In fact, in numerous instances respondents deny claims and/or unilaterally cancel the service contracts of consumers who file multiple claims. Therefore, the representation set forth in paragraph nine was, and is, false and misleading.

PAR. 11. During the course and conduct of their business, respondents have entered into valid service contracts with consumers. Among those service contracts is the one attached as Exhibit B.

PAR. 12. During the course of administering claims submitted by the purchasers of respondents' service contracts, respondents have engaged in a pattern or practice of breaching their promise to reimburse claims under the terms of these contracts by:

1. Unilaterally canceling consumers' contracts, even though the terms and conditions of these contracts do not reserve to or create in the respondents a right to engage in such unilateral cancellation; and
2. Refusing to pay valid repair claims on the asserted ground that consumers had failed to obtain prior authorization from respondents. In fact, respondents routinely hindered consumers' ability to obtain prior authorization for repairs by, for example, failing to answer the toll free number that consumers are required to call in order to obtain such authorization.

Respondents' conduct as set forth above has caused substantial injury to consumers that is not outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. This conduct was, and is, an unfair practice.

PAR. 13. The acts and practices of respondents alleged in this complaint have constituted and now constitute deceptive or unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

EXHIBIT A



GRIFFIN SYSTEMS, INC.

Local (216) 881-8787
 Toll Free National 1-800-442-2886
 Toll Free Ohio 1-800-821-4204
 Toll Free Canadian 1-800-458-2277

Protect your new car
 from the ...

GENERAL MOTORS' FACTORY EXTENDED
 WARRANTY FOR YOUR NEW CAR
 SOUNDS GREAT —

BUT IT ISN'T!

IT LEAVES A COSTLY GAP BETWEEN
 THE REGULAR 12/12 NEW CAR
 WARRANTY AND THE "FACTORY
 EXTENDED WARRANTY"

— THE AUTOGAP!



Dear New General Motors Owner:

It is true that your General Motors Factory Extended Warranty covers the drive train on your car for 60,000 miles. It is also true that those parts are designed to last more than 100,000 miles — and usually do!

What General Motors hasn't told you is that the Extended Warranty leaves an AutoGap — a wide crevice you don't want your car to fall into. In that crevice are your water pump, fuel pump, electrical system, cooling system, brakes, high tech options — and more.

Yes, most of the parts that sooner or later break down are not covered!

And that's where the Griffin VPP — Vehicle Protection Plan — steps in. It insures against the AutoGap, gives you added protection against the thousands of dollars of repairs your General Motors vehicle could need after the 12 month/12,000 mile warranty expires. Protection your General Motors Extended Warranty doesn't give you.

Check the chart on the reverse of this letter. Then take a minute to read the brochure. You'll see why Griffin VPP is one of the most comprehensive warranty programs on the market today to protect you against the costly AutoGap.

With Griffin VPP coverage you'll drive your new General Motors vehicle worry-free, safe in the knowledge that you are fully protected against high repair costs.

Fill out and mail the registration form today and be sure you're protected against having to pay thousands of dollars in repair bills.

Sincerely yours,

GRIFFIN SYSTEMS, INC.

Christine A. Knowles

Christine A. Knowles
 Business Manager

P.S. Best of all, with Griffin VPP most claims are handled with one toll-free call for authorization.

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EXHIBIT A


**AUTOGAP
GENERAL MOTORS COMPARISON CHART**

Item Covered	New Car Warranty 1 Year or 12,000 Miles	Factory Established Warranty 4 Years or 80,000 Miles	Getfin VPP AutoGap Coverage
DRIVE TRAIN: Engine	Yes	Yes	Yes
Transmission	Yes	Yes	Yes
Differential	Yes	Yes	Yes
COOLING/ FUEL SYSTEMS: Radiator	Yes	No	Yes
Fan and Clutch	Yes	No	Yes
Engine Fan Motor	Yes	No	Yes
Fuel Tank	Yes	No	Yes
Fuel Pump	Yes	No	Yes
Water Pump	Yes	No	Yes
Fuel Lines	Yes	No	Yes
FRONT/ REAR WHEEL DRIVE: Drive Housing/Parts	Yes	Yes	Yes
Axle Shafts	Yes	Yes	Yes
Hub Bearings	Yes	Yes	Yes
Prop Shafts	Yes	Yes	Yes
Seals & Gaskets	Yes	Yes	Yes
Universal Joints	Yes	Yes	Yes
STEERING: Gear Housing & Parts	Yes	No	Yes
Power Steering Pump	Yes	No	Yes
Main Shaft	Yes	No	Yes
Intermediate Shaft	Yes	No	Yes
Couplings	Yes	No	Yes
Seals and Gaskets	Yes	No	Yes
FRONT SUSPENSION: MacPherson Struts	Yes	No	Yes
Control Arms	Yes	No	Yes
Shafts and Bushings	Yes	No	Yes
Ball Joints	Yes	No	Yes
Steering Knuckles	Yes	No	Yes
Bearings and Seals	Yes	No	Yes
Stabilizer Shaft	Yes	No	Yes
Stabilizer Linkage	Yes	No	Yes
HEATING AND AIR COND.: Heater Core	Yes	No	Yes
Compressor	Yes	No	Yes
Clutch & Pulley	Yes	No	Yes
Condenser	Yes	No	Yes
Evaporator	Yes	No	Yes
Accumulator	Yes	No	Yes
Temp. Control	Yes	No	Yes
Gaskets & Seals	Yes	No	Yes
BRAKES: Master Cylinder	Yes	No	Yes
Assist Boosters	Yes	No	Yes
Wheel Cylinders	Yes	No	Yes
Combination Valve	Yes	No	Yes
Hydraulic Lines	Yes	No	Yes
Disc Calipers	Yes	No	Yes
Seals & Gaskets	Yes	No	Yes
ELECTRICAL: Starter Motor	Yes	No	Yes
Starter Solenoid	Yes	No	Yes
Generator	Yes	No	Yes
Alternator	Yes	No	Yes
Voltage Regulator	Yes	No	Yes
Distributor	Yes	No	Yes
Wiring Harness on Covered Parts	Yes	No	Yes
Windshield Wiper Motors	Yes	No	Yes
Electronic Parts	Yes	No	Yes
Heater Blower Motor	Yes	No	Yes
HIGH TECHNOLOGY FEATURES: Power Window Motors	Yes	No	Yes
Power Seat Motors	Yes	No	Yes
Door Lock Motors	Yes	No	Yes
Cruise Control	Yes	No	Yes
Sun Roof Motor	Yes	No	Yes
ADDITIONAL BENEFITS: Rental Car Allowance	Yes	No	Yes
Towing Allowance	Yes	No	Yes
Transfer	Yes	Yes	Yes
DEDUCTIBLE:	No	\$100 each claim	\$25 each claim

Note: This chart is for comparison purposes only and is not meant to be a definitive listing of benefits which are thoroughly explained in your service agreement.

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EXHIBIT A

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FULL REFUND WITHIN 60 DAYS IF NOT COMPLETELY SATISFIED

During the first 60 days of Plan ownership, you have the option of no claim or have a claim. If you have filed a claim or have owned the plan for more than 60 days, cancellation returns will be based on the Rule of 75's provision of time or mileage, whichever is the lesser.

TO PARTICIPATE IN THIS PROGRAM
 Simply request the program information by returning the enclosed agreement, registration and returning it with your check, credit card number, or any payment method. We will mail you a pre-printed and return-addressed envelope.

GRIFFIN SYSTEMS, INC.
 10000 W. 10th Ave.
 P.O. Box 3190
 Cleveland, Ohio 44101-0980

CLEVELAND AREA (216) 861-8782
 OHIO, WAIS (800) 442-2885
 CINCINNATI, WAIS (800) 458-2277

The coverage discussed in this brochure is for informational purposes only. The Service Agreement details all conditions and terms.

1-800-458-2277

MR. FIXIT recommends

VEHICLE PROTECTION PLAN

WHAT IS THE VEHICLE PROTECTION PLAN?



Q. What is the Vehicle Protection Plan?
 A. A Mechanical Services Contract which pays for parts on the major mechanical areas of your vehicle. (See COVERED COMPONENTS). The plan also provides alternative options for car rental as well as towing expenses. (See ADDITIONAL BENEFITS).

Q. Is there a maximum number of claims I may file?
 A. No. You may use your plan as often as necessary. There is no limit on the number of claims you may submit.

Q. What must I do?
 A. The vehicle must be operated and maintained in accordance with the manufacturer's Owner's Guide.

Q. Why do I need the Vehicle Protection Plan?
 A. Because most major repairs occur after the manufacturer's warranty expires, as the most common repair of a vehicle is to repair parts of time, you will have protection when you most need it.

Q. What do I do if my vehicle breaks down?
 A. You may choose to have it repaired at any reputable dealer or service center. Your Service Agreement lists help and instructions.

BACKING BY A MAJOR INSURANCE PROGRAM

The Griffin Systems Vehicle Protection Plan is fully insured by a major insurance company. This is not an individual insurance program.

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EXHIBIT A

our law cost of a car's value

The Vehicle Protection Plan

Send anywhere in the United States and Canada. Covers parts and labor.

COVERED COMPONENTS

1. A HEDGE AGAINST INFLATION BY PROTECTING YOU FROM RAPIDLY RISING AUTOMOBILE REPAIR COSTS.

2. LESS WORRY AND EXPENSE FROM MOST MAJOR MECHANICAL REPAIRS!

This important protection means you should never have to dig down deep to repair or replace a long list of your (just see the chart at right) most important mechanical parts.

THE VEHICLE PROTECTION PLAN covers the most common and most expensive repairs that will give you more miles of top performance a common sense solution to one of today's big problems for drivers.

MR. FIXIT recommends **The Vehicle Protection Plan**

Engine:
Stroke engine - Cylinder block, heads, all piston-rod-axle parts, main shaft, timing belt, timing chain, harmonic balancer, valve cover, oil pan, oil pump, vacuum pump, engine mounts, water and fuel pumps. Also covered are turbo-charger bearings, internal parts, valves, seals and gaskets.

Other Engines: - All of the above listed parts, plus diesel, fuel injection pump, lines and nozzles.

Transmission:
Case, all internal lubricated parts, torque converter, vacuum modulator, seals, gaskets and transmission mounts. Includes transfer case on 4 wheel drive vehicles, all internal parts, seals and gaskets.

Front & Rear Wheel Drive:
Frame, front drive housing and all internal parts, front hub bearings, seals and gaskets. Rear axle hub bearings, seals and gaskets.

Base: - Axle housing and all internal lubricated parts, propeller shafts, "U" joints, axle shafts, bearings, supports, seals and gaskets.

Cooling and Fuel:
Radiator, fan and clutch, engine fan motor, fan belt and fan links.

Steering:
Steering pump, steering rack and intermediate shafts, couplings, seals and gaskets.

Front Suspension:
Mechanical strut, upper and lower control arms, control arm shafts and bushings, upper and lower ball joints, shock absorbers, coil springs, stabilizer shaft, stabilizer linkage and bushings.

Heating & Factory Approved:
Heater core, compressor, clutch and pump, condenser, evaporator, accumulator, expansion control programmer and seal.

Air Conditioning:
Master cylinder, assist boosters, wheel cylinders, combination valve, hydraulic lines and fittings, disc calipers, seals and gaskets.

Brakes:
Master cylinder, assist boosters, wheel cylinders, combination valve, hydraulic lines and fittings, disc calipers, seals and gaskets.

Electrical:
Starter motor and solenoid, generator, alternator, regulator, distributor, wiring harness, switches, relays, fuses, horn, wiper motor, manually operated switches on covered component parts, wiper control compressor, its sensors and electrical connections, electronic control module, electronic control module, electronic control module, electronic control module, electronic control module, electronic control module.

High Technology Features:
Power window motor, power seat motor, door lock motor, factory installed anti-lock brakes, air pollution motor and sun roof motor.

Rental Car Allowance:
If due to the mechanical breakdown of a covered vehicle has to be repaired overnight at the repair facility, the Vehicle Protection Plan will reimburse you for the rental fee - to a maximum of \$75 per day. There is a maximum of 30 days for each occurrence (maximum is 90 days).

Towing Allowance:
If due to the mechanical breakdown of a covered part (engine for example) and you are unable to drive your vehicle to the repair facility, the Vehicle Protection Plan will reimburse you for the towing charge - to a maximum of \$35 per occurrence.

Free Transfer Provision:
If you should decide to sell your vehicle before your plan expires, you may transfer the remaining term of your plan to the new owner at no charge.

ANNOUNCING FOR THE FIRST TIME EVER!
A one time deductible.
Griffin Systems now has a one time deductible of \$25.00. You pay the deductible only one time during the lifetime of your plan.

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EXHIBIT A



MADE AVAILABLE BY GRIFFIN SYSTEMS, INC.
 ADMINISTRATOR
 4101 PROSPECT AVENUE
 P.O. BOX 5190
 CLEVELAND, OH 44101-0190

CALL TOLL FREE
 OUTSIDE OHIO 800 442-2886
 IN OHIO (800) 821-4204
 CLEVELAND AREA (216) 881-8787
 CANADA (800) 458-2277

1227 C 02013

OWNER INFORMATION MOCCO J CRISAFI 5601 FLOWERDALE CLEVE OH 44144		VEHICLE INFORMATION (Verify and correct if necessary) Year Make Model 1987 OLDSMOBILE CALAIS Vehicle Identification Number 1G3NF14L7M304025	
Please indicate Current odometer reading <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> DO NOT enter a figure in tenths-of-mile box.		Original "DELIVERY DATE" of your vehicle. (Date your vehicle was put into use by its first owner, lessee or, if a Demo, first day of service.) MONTH _____ DAY _____ YR _____	

PLEASE COMPLETE THE REVERSE SIDE OF THIS REGISTRATION TO DETERMINE IF YOUR VEHICLE QUALIFIES FOR THE VEHICLE PROTECTION PLAN.

Coverage starts on the "DELIVERY DATE" of the vehicle described above. Coverage remains in effect for the number of months or the number of miles (whichever comes first) applicable to the plan YOU SELECT below.

SELECT ONE PLAN	MONTHS	TERM MILES	PLAN COST	THE COST OF THE PLANS IS GUARANTEED UNTIL OCT 2 1987 COST MAY CHANGE AFTER DATE SHOWN ABOVE
<input type="checkbox"/> A	36	50,000	\$314.00	
<input type="checkbox"/> B	48	50,000	\$322.00	
<input type="checkbox"/> C	60	55,000	\$330.00	
<input type="checkbox"/> D	60	65,000	\$346.00	
<input type="checkbox"/> E	72	80,000	\$490.00	
<input type="checkbox"/> F	12	90,000	\$570.00	

1227 IN '87

PLEASE INDICATE METHOD OF PAYMENT

By CHECK, for the full amount of \$ _____, made payable to Griffin Systems, Inc. (Please remember to enclose check when you return this Registration.)

CHARGE TO VISA MASTERCARD AMERICAN EXPRESS
 CREDIT CARD ACCOUNT NO. _____ EXPIRES _____

EASY PAYMENT PLAN
 A service charge of \$30.00 is added to the plan cost chosen above. The sum is to be paid in 8 installments. THE FIRST PAYMENT is to be enclosed with this registration. United States Acceptance Corporation will issue a payment book for the 7 remaining payments due. Should you decide to cancel the plan prior to its expiration, the \$30.00 service charge is non-refundable.

8 MONTHLY PAYMENTS OF					
PLAN A	PLAN B	PLAN C	PLAN D	PLAN E	PLAN F
\$43.00	\$44.00	\$45.00	\$47.00	\$65.00	\$75.00

PLEASE SIGN AND DATE

I understand that coverage under the Vehicle Protection Plan I have selected above will begin upon Griffin's approval of this registration and Griffin's processing of my payment of the required charge.

I hereby warrant that the vehicle described above is in good working condition, to the best of my knowledge.

SIGNATURE _____ DATE SIGNED _____

Phone Number: Area Code (_____) _____ - _____

Sign date and mail this original using envelope enclosed or send to above address

ORIGINAL
 TO BE RETURNED TO GRIFFIN

Exhibit A
 Page 5

EXHIBIT A

I – COVERAGE ELIGIBILITY

If the answer to any of the following four (4) questions is "YES," the vehicle described on the reverse of this form is not eligible for registration under the Vehicle Protection Plan.

- | | YES | NO |
|---|--------------------------|--------------------------|
| 1. If you have not had a trailer tow package installed by the factory, or your dealer – will you be pulling a trailer weighing more than 2500 pounds? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. If your vehicle is a truck, is its gross vehicle weight rating (GVWR) more than 10,000 pounds? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Will your vehicle be used as a police car, ambulance, or other emergency vehicle? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Will your vehicle be used for daily rental, livery or taxi? | <input type="checkbox"/> | <input type="checkbox"/> |

If your vehicle does not have a Manufacturer's Warranty enforceable in the U.S. or Canada, it is not eligible for coverage.

II – FOR STATISTICAL PURPOSES

Your answer to the questions listed below will enable us to complete our records on your vehicle.

- A. Are you the vehicle's
- First owner?
 - Second owner?
 - Third owner?
- B. Was your vehicle
- Purchased?
 - Leased?
- C. Was your vehicle a Dealer Demonstrator? Yes No
- D. Does your vehicle have:
- | | |
|---|---|
| <input type="checkbox"/> Standard Transmission | <input type="checkbox"/> Factory or Dealer Installed Air Conditioning |
| <input type="checkbox"/> Automatic Transmission | <input type="checkbox"/> Electric Power Seats |
| <input type="checkbox"/> Diesel Engine | <input type="checkbox"/> Electric Power Windows |
| <input type="checkbox"/> Turbo Charged Engine | <input type="checkbox"/> Electric Power Door Locks |
| <input type="checkbox"/> Four Wheel Drive | <input type="checkbox"/> Electric Power Antenna |
| <input type="checkbox"/> Cruise Control | <input type="checkbox"/> Electric Power Sun Roof |

Upon our receipt and approval of this Registration, we will prepare and mail to you a Service Agreement which details the Conditions and Terms of the Plan you selected.

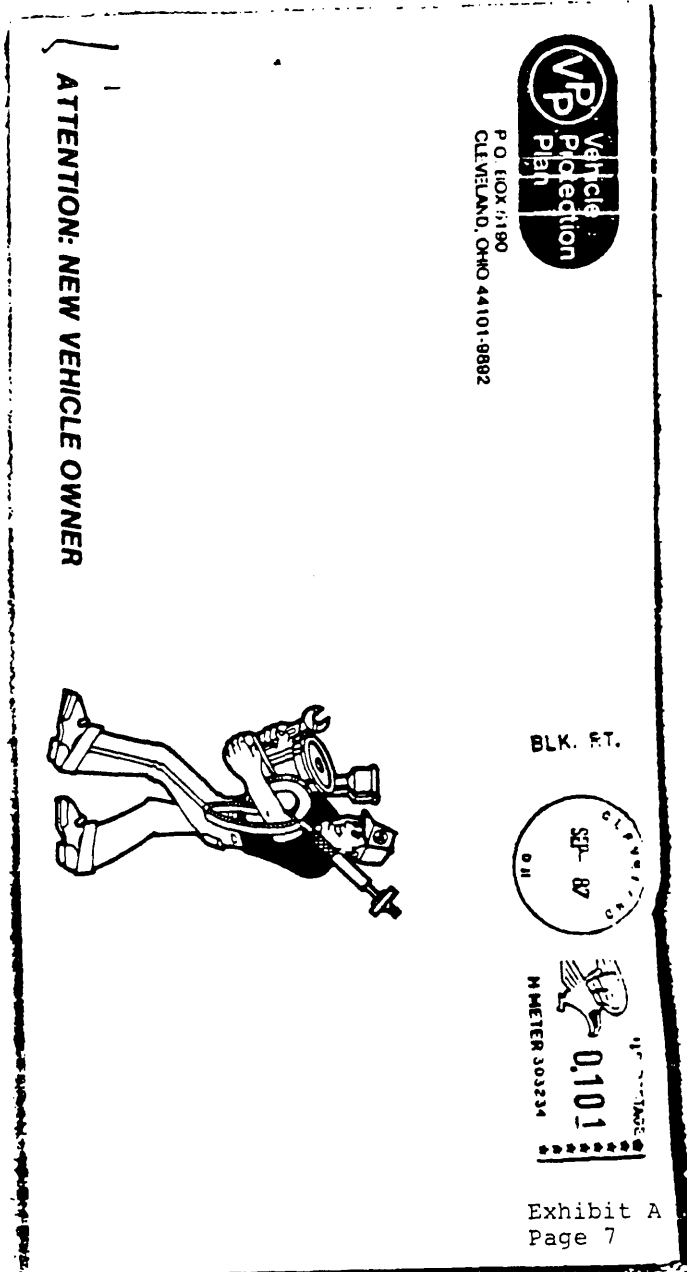
THANK YOU FOR YOUR PATRONAGE!



The Vehicle Protection Plan

Complaint

EXHIBIT A



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EXHIBIT B

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VEHICLE PROTECTION PLAN

SERVICE AGREEMENT

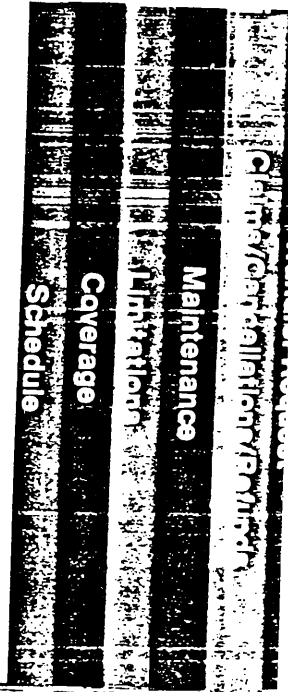


Exhibit B

EXHIBIT B



Your protection against costly
mechanical breakdown.

I. Service Agreement

Please read this agreement carefully to become familiar with all its contents.

This Service Agreement (agreement) is between the purchaser (you) named in the Schedule and Griffin Systems, Inc. (we, us). This agreement is transferable. This agreement begins on the effective date shown in the Schedule and remains in effect for the term or mileage also shown in the Schedule (whichever occurs first).

Statements contained in your Agreement Registration are incorporated herein by reference.

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EXHIBIT B

I. Schedule

PURCHASER NAME AND ADDRESS

AGREEMENT NUMBER

PLAN COST

VEHICLE INFORMATION

Year

Make

Model

Vehicle Identification Number

Class

Effective date of this Agreement (1)	Term (months)	Issue date of this Agreement	Odometer reading at registration date (2)	Agreement expires when odometer reads

1. The "Effective date of this Agreement" is the original "Delivery Date" of your vehicle as indicated by you on the Agreement Registration

2. The "Odometer reading at registration date" is the number of miles registered by your odometer as indicated by you on the Agreement Registration

II. What is Covered**A. Mechanical Breakdown**

We agree to pay for the reasonable cost of repair or replacement of parts/units within the components covered by this agreement. Such repair or replacement must have arisen from the failure of defective parts/units, which failure may occur during the normal use of your vehicle.

Computer
 Services

EXHIBIT B

II. What is Covered (cont'd)

In no event will our liability exceed the actual cash value of your vehicle prior to the time of the mechanical breakdown. This actual cash value will be determined by the published wholesale value of the vehicle. Replacement may be made with like kind and quality and depreciation or betterment applied.

B. Covered Components:

Only the components/units/parts listed below are covered.



1. Engine

Gasoline Engine

Cylinder block, heads, all internal lubricated parts, manifolds, timing gears, timing gear chain or belt and cover, flywheel, harmonic balancer, valve covers, oil pan, oil pump, vacuum pump, engine mounts, water and fuel pumps, turbocharger housings and internal parts, valves, seals and gaskets.

Diesel Engine

All of the above listed parts, plus diesel fuel injection pump, lines and nozzles.



2. Transmission

Case, all internal lubricated parts, torque converter, vacuum modulator, seals, gaskets and transmission mounts. Includes transfer case on four wheel drive vehicles, all internal parts, seals and gaskets.



3. Front Wheel Drive

Final drive housing and all internal parts, axle shafts, constant velocity joints, front hub bearings, rear axle hub bearings, seals and gaskets.

4. Rear Wheel Drive

Axle housing and all internal lubricated parts, propeller shafts, "U" joints, axle shafts, bearings, supports, seals and gaskets.

EXHIBIT B

**5. Cooling and Fuel**

Radiator, fan and clutch, engine fan motor, fuel tank and fuel lines.

**6. Steering**

Gear housing and all internal parts, power steering pump, steering main and intermediate shafts, couplings, seals and gaskets.

**7. Front Suspension**

MacPherson struts, upper and lower control arms, control arm shafts and bushings, upper and lower ball joints, steering knuckle, wheel bearings and seals, stabilizer shaft, stabilizer linkage and bushings.

**8. Heating and Factory Approved Air Conditioning**

Heater core, compressor, clutch and pulley, condenser, evaporator, accumulator, temperature control programmer and seals.

**9. Brakes**

Master cylinder, assist boosters, wheel cylinders, combination valve, hydraulic lines and fittings, disc calipers, seals and gaskets.

**10. Electrical**

Starter motor and/or solenoid, generator, alternator, voltage regulator, distributor, wiring harness for covered component parts, manually operated switches for covered component parts, windshield wiper motors, electronic level control compressor, its sensor and limiter valve, Electronic fuel injection sensors, control module and injectors, electronic module, Electronic spark control detonation sensor and controller, Heater blower motor.

**11. High Tech Features**

Power window motor, power seat motor, door lock motors, factory installed cruise control, power antenna motor and sun roof motor.

EXHIBIT B

II. What is Covered (Cont'd) – Additional Benefits



C. Rental Reimbursement

In the event of a mechanical breakdown caused by parts or units within the components covered by this agreement, we agree to pay for the cost of substitute transportation. The payment will be for the rental fee, to a maximum of \$20.00 per day, for a maximum of 5 days or \$100.00 per occurrence. In computing the rental amount due you, we will consider only the actual working time on the repair of your vehicle, as follows: One day's transportation expense will be due for each 8 hours of flat rate time, provided that your vehicle must be retained overnight for the repair of covered parts eligible for payment.

This provision excludes:

1. Down time waiting for parts or any other delays beyond the control of the repair facility.
2. Down time for routine maintenance repairs.

The deductible amount of \$25.00 does not apply to this provision.



D. Towing Reimbursement

In the event that your vehicle becomes disabled due to the mechanical breakdown of a covered part, or unit eligible for payment, we will pay for the cost of towing your vehicle to a repair facility. We will pay for the actual towing charge to a maximum of \$35.00 per occurrence. The deductible amount of \$25.00 does not apply to this provision.



E. Free Transfer Provision

If you should decide to sell your vehicle before your plan expires, you may transfer the remaining term of your plan to the new owner at no charge. A "Transfer Request" is included at the back of this Agreement.

EXHIBIT B

III. What is Not Covered

If your vehicle becomes disabled due to any of the circumstances listed below, we will not pay for the cost of repair or replacement of any part/unit, towing charges and/or rental charges.

Exclusions

1. Any part/unit not listed in part II-"B. Covered Components" of this agreement.
2. Any part/unit which is damaged, in any way, due to your vehicle having been used to pull a trailer weighing more than 2500 pounds, unless manufacturers authorized "Trailer Tow Package" is installed.
3. Any part/unit covered by a warranty issued by the vehicle's manufacturer.
4. Any part/unit damaged by fire, water, freezing, riot, windstorm, hail, lightning, earthquake, theft, nuclear contamination, collision, upset, malicious mischief or vandalism.
5. Any part/unit damaged because of your negligence, misuse or failure to have your vehicle maintained as suggested in your Manufacturer's Owner Manual.
6. Any part/unit damaged because of alterations made to your vehicle, when said alterations were not recommended by the manufacturer of your vehicle.
7. Any part/unit of your vehicle's odometer if it has been altered so that actual mileage of your vehicle is not shown.
8. Any part/unit, mechanically defective, for which the vehicle's manufacturer has publicly announced responsibility to recall the vehicle for correction of the defective part/unit.
9. Any part/unit which is damaged after the repossession of your vehicle.
10. Any part/unit if your vehicle is used for commercial livery, delivery purposes, racing or competitive speed.
11. Any loss of your time caused by delays in the repair or maintenance of your vehicle.
12. Any loss of any kind that occurs to your vehicle while your vehicle is out of your care and custody or rented to others.
13. Any loss, expenses or charges resulting from the length of time necessary to repair your vehicle, such as hotel accommodations, meals, telephone charges, loss of goods of any kind, loss of salaries, loss of life or loss due to accident or bodily injury.
14. Any fluids, lubricants, shop supplies and taxes.

EXHIBIT B

IV. Maintenance Procedure

Your Vehicle Protection Plan requires you to maintain your vehicle according to the minimum required maintenance intervals as specified in your owners manual which came with your vehicle at the time of delivery. Maintenance need not be performed by a dealership or service facility. If you elect to perform your own maintenance retain the receipts for parts and fluid you buy for maintenance.

We have provided a Maintenance Register for you to record the required maintenance of your vehicle.

Maintenance Register

Date	Mileage	Services Performed	Services Performed by
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			

EXHIBIT B

Maintenance Register

Date	Mileage	Services Performed	Services Performed by
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			

Maintenance

Complaint

EXHIBIT B

Maintenance Register

Date	Mileage	Services Performed	Services Performed by
30			
31			
32			
33			
34			
35			
36			
37			
38			
39			
40			
41			
42			
43			
44			
45			
46			

EXHIBIT B

Maintenance Register

Date	Mileage	Services Performed	Services Performed by
47			
48			
49			
50			
51			
52			
53			
54			
55			
56			
57			
58			
59			
60			
61			
62			
63			

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Complaint

EXHIBIT B

V. Claims**1. To Report a Claim**

In the event of a mechanical breakdown of your vehicle, please call one of the following number(s) for instructions

1-800-228-9096

Great Plains Insurance Company, Inc
4019 Prospect Ave
P.O. Box 6298
Cleveland, Ohio 44101

Whenever possible return your motor vehicle to the dealership where you bought it or the most convenient repair facility of your choice anywhere within the continental United States and Canada. Request that the Service Manager call the appropriate number listed above. Our Claims Manager will authorize the repair by phone.

2. Deductible

When your first claim occurs, we will deduct \$25.00 from the amount due you. This \$25.00 is a one-time deductible amount. Any claims you submit after the first one will have no deductible amount.

3. Conditions

- a. Once a loss occurs, you must protect the vehicle from further damage.
- b. No claim will be paid unless the amount to be paid has been previously authorized by telephone or in writing.
- c. We reserve the right to examine, adjust, inspect or investigate any claims.
- d. Claims must be submitted within sixty (60) days of the date of loss.

END PAGE

EXHIBIT B

VI. Cancellation and Refunds**A. Cancellation**

This Service Agreement may be cancelled by you at any time during its term by completing the "Cancellation Request" included on the reverse side of this page. Upon completion of the "Cancellation Request", please mail this entire agreement back to us.

GRIFFIN SYSTEMS, INC.
Administrators
4101 Prospect Avenue
P.O. Box 5190
Cleveland, Ohio 44101-0190

B. Refunds**1. Within the first 60 days**

Within 60 days of its Issue Date, we will refund 100% of the amount paid. PLEASE NOTE that if you chose our Finance Plan, the \$30.00 is NON-REFUNDABLE.

2. After the first 60 days

After the first 60 days of its Issue Date, we will refund the lesser of two sums based upon the Rule of 78th calculation of elapsed time and mileage. If you have an unlimited mileage plan, calculated refunds will be based on elapsed time or a total of 60,000 miles.

Complaint

EXHIBIT B

Cancellation Request

To cancel this Agreement, please complete the following information

1 Agreement number (as it appears on page 2 "SCHEDULE") _____

2 Current Odometer reading on the vehicle IMPORTANT - DO NOT enter a figure in tenths-of-mile box

3 Reason for cancellation _____

4 Do you wish to apply the refund (if any) towards the cost of a new Agreement for your new vehicle? YES NO

If "yes" please indicate YEAR _____ MAKE _____ MODEL _____
of your new vehicle. Upon our receipt of this information, we will promptly mail you an Agreement Registration and details of the transaction. If "no", the the refund amount (if any) will be sent to you.

5 Your signature _____ Date Signed _____

Please mail this Agreement to:

If you have any questions, please call us at:

GRIFFIN SYSTEMS, INC
Administrators
4101 Prospect Avenue
P O Box 5190
Cleveland, Ohio 44101-0190

Cleveland area 216-881-8787
In Ohio 1-800-821-4204
National WATS 1-800-442-2886
Canadian WATS 1-800-458-2277

Complaint

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EXHIBIT B

Transfer Request

To transfer this Agreement, please complete the following information

1 Agreement number (as it appears on page 2 "SCHEDULE") _____

2 Effective date of the transfer _____

3 Odometer reading at date of transfer **IMPORTANT - DO NOT enter**
a figure in tenths-of-mile box

4 Vehicle transferred to

Name of purchaser _____

Address _____

City _____ State _____ Zip _____

SIGNATURE of Vehicle Purchaser _____ Date Signed _____

SIGNATURE of Vehicle Seller _____ Date Signed _____

Please mail this Agreement to:

If you have any questions, please call us at:

GRIFFIN SYSTEMS, INC
Administrators
4101 Prospect Avenue
P.O. Box 5190
Cleveland, Ohio 44101-0190

Cleveland area 216-881-8787
In Ohio 1-800-821-4204
National WATS 1-800-442-2886
Canadian WATS 1-800-458-2277

INITIAL DECISION

BY JAMES P. TIMONY, ADMINISTRATIVE LAW JUDGE
JUNE 30, 1993

On this date, I granted the renewed motion for sanctions, the motion for default judgment, and the motion for summary decision filed by counsel supporting the complaint. Those orders shall be the Initial Decision in this case by Rule 3.38(b), Rule 3.12 (c), and by Rule 3.24 (a)(2).

ORDER GRANTING DEFAULT JUDGMENT
AGAINST ROBERT W. BOUGHTON

By motion filed October 5, 1992, complaint counsel seek default judgment, pursuant to Rule 3.12(c), against individual Robert W. Boughton. For the reasons stated therein, and in the supporting papers, the motion is hereby granted.

ORDER GRANTING COMPLAINT COUNSEL'S RENEWED
MOTION FOR SANCTIONS

By motions dated August 11, 1992 and January 29, 1993, complaint counsel moved, pursuant to Section 3.38(b) of the Commission's Rules of Practice, for sanctions against respondents Griffin Systems, Inc., Gennaro J. Orrico and Alfonso S. Giordano ("the named respondents") for their failure to comply with outstanding discovery requests of complaint counsel. Based on the reasons set forth in those motions and supporting memorandum, said motion is granted.

It is therefore ordered that the following sanctions are imposed on the named respondents:

(1) Pursuant to Section 3.38(b)(1), for the purpose of this proceeding it shall be inferred that all evidence withheld by the named respondents would have been adverse to them;

(2) Pursuant to Section 3.38(b)(2), for the purpose of this proceeding the following facts are established:

(a) In numerous instances the named respondents denied claims and/or unilaterally canceled the service contracts of consumers who filed multiple claims;

(b) The named respondents have, in a substantial number of instances, engaged in a pattern or practice of breaching their promise to reimburse claims under the terms of the contracts by unilaterally canceling consumers' contracts; and

(c) The named respondents have, in a substantial number of instances, engaged in a pattern or practice of refusing to pay valid repair claims on the asserted ground that consumers have failed to obtain prior authorization from the named respondents;

(3) Pursuant to Section 3.38(b)(3), the named respondents cannot introduce into evidence or otherwise rely upon, in support of any claim or defense, the requested service contract records; and

(4) Pursuant to Section 3.38(b)(4), the named respondents may not be heard to object to the use of secondary evidence to show what the withheld evidence would have shown.

SUMMARY DECISION

INTRODUCTION

This case involves the sale of vehicle service contracts throughout the United States. Respondents allegedly misrepresent the terms of their Vehicle Protection Plan which promised automobile purchasers protection against high repair costs on over 100 parts of the car. The complaint describes several broken promises to consumers: respondents promise to protect fully consumers against repair costs but pay only a portion of those costs; respondents promise to pay a rental car allowance while their car is being repaired but deceptively limit payments under that promise; respondents promise consumers may submit an unlimited number of claims but many times deny claims and cancel the contracts of consumers who file multiple claims; respondents refuse to pay repair claims for failure to obtain prior authorization and hinder consumers' ability to obtain prior authorization by failing to answer the telephone.

Complaint counsel filed a motion for summary decision. Respondents opposed. The parties stipulated that there is no genuine issue as to the following material facts:

I. STIPULATED MATERIAL FACTS

1. Complaint counsel has submitted exhibits to its trial brief, filed October 5, 1992, including deposition transcript excerpts. Throughout this stipulation of facts, the abbreviation "CX" refers to Commission Exhibit number, and the abbreviation "(Name) Dep." refers to the deposition of the person identified. The following table lists the numbers for these disposition transcript excerpts, as well as a brief description of the deponent.

Orrico CX 1	Gennaro J. Orrico, named respondent.
Giordano CX 2	Alfonso S. Giordano, named respondent.
Canitia CX 3	Al Canitia, Great Plains and Griffin claims manager, employed from 1987 through 1992.
Stoudmire CX 4	Colleen Stoudmire, Griffin claims supervisor, employed from 1987 through 1990.
Molzan CX 5	David Molzan, Griffin claims supervisor, employed for approximately two years from either 1987 or 1988.
Cassidy CX 6	Kathleen Cassidy, Griffin claims supervisor, employed from November 1986 through 1988 or 1989.
Knowles CX 7	Christine Knowles, Griffin office manager, employed from October 1986 through March 1988.
Sender CX 8	Kathy Janko-Sender, Griffin customer service representative, employed prior to 1982 through August 1, 1991.
Biederman CX	Judith Biederman, Griffin customer service representative, employed for three or four years ending approximately in 1986.

A. The Respondents

1. Griffin Systems, Inc.

2. Griffin Systems, Inc. ("Griffin"), incorporated on April 2, 1984, is an Ohio corporation with its office and principal place of business located at 4101 Prospect Avenue, Cleveland, Ohio. Respondents' Answer to Complaint at paragraph 1(a); Commission Exhibit ("CX") 12-1; CX 30; Orrico Dep. at 13.

3. From the time of its incorporation through at least 1988, Griffin engaged in the promotion, marketing and sale of vehicle service contracts, called the "Vehicle Protection Plan" or "VPP," to new and used vehicle buyers. Respondents' Answer to Complaint at paragraph 2; Respondents' Answers to Interrogatories, CX 10, at paragraphs 4(a) and (b).

4. From the time of its incorporation through at least November 1991, Griffin also administered and paid claims submitted by consumers pursuant to those service contracts. Respondents' Answer to Complaint at paragraph 2.

5. The average retail price of Griffin service contracts was \$315. CX 10 at paragraph 4(e).

6. Throughout its history, Griffin sold over 96,000 service contracts, with total gross sales of approximately \$29 million. CX 10 at paragraph 4(f); Griffin's answer to Commission staff access letter, CX 12, at paragraph 5(b). Consumers asserted more than 43,000 claims during that period of time. CX 10 at paragraph 4(g). Of those claims asserted, Griffin paid between \$6.8 million and \$10 million on over 32,000 claims, and denied over 8,000 claims. CX 10 at paragraph 4(k); CX 12 at 41, 45.

7. Griffin paid various insurance companies an underwriting fee on each service contract sold. In April 1985, that premium was \$190 per plan for unlimited mileage plans, and \$130 per plan for all others. In return for this fee, the insurance companies agreed to pay all claims that were submitted pursuant to the service contracts. The remainder was left for Griffin to administer the program, which included claims administration and answering plan holders' questions. Giordano Dep. at 72-74; CX 39.

8. Great Plains Insurance Company ("Great Plains"), headquartered in Nebraska, was one insurance company that underwrote Griffin service contracts. Orrico Dep. at 94-101. Great Plains also

administered claims on behalf of Griffin. *Id.* Griffin began to do business with Great Plains in 1982, *id.* at 94, and Griffin ultimately purchased Great Plains in December 1986. *Id.* at 101; CX 11-6.

9. Great Plains began to sell "mechanical breakdown insurance" ("MBI") policies on its own behalf after Griffin acquired the firm. Orrico Dep. at 107-09. An MBI policy differs from a service contract in that the former must be approved by a state department of insurance, and is in fact an insurance policy, while the latter is simply a contract between two parties. Giordano Dep. at 138-42. The solicitation materials for the Great Plains MBI policies were similar to the Griffin solicitation materials. Compare CX 135 with CX 14 at 3-6 and CX 17 at 3-4.

10. Griffin currently has no employees, although the firm still exists in corporate form. Respondents' Supplemental Answers to Interrogatories, CX 11, at 6.

2. Gennaro J. Orrico

11. Gennaro "Jerry" Orrico was the sole owner of Griffin at the time of its incorporation in 1984 and from at least 1988 to the present. CX 10 at paragraph l(d); Orrico Dep. at 11-12. As the owner of Griffin, Orrico also was the ultimate owner of Great Plains. Orrico Dep. at 101-03.

12. From 1982 to the date of Griffin's incorporation, Orrico sold service contracts as a sole proprietorship under the name "J. Orrico trading as Griffin Systems." Orrico Dep. at 11-12. Orrico briefly served as president of Griffin from the date of its incorporation through at least the end of 1984, and again from July 15, 1990 through the present. He also served as vice-president from 1986 through July 1990. CX 11 at 2-5; Respondents' Answer to Complaint at paragraph l(b); Orrico Dep. at 47-48.

13. Orrico was responsible for the preparation and dissemination of the Griffin solicitation materials. CX 10 at paragraph 6. In addition, Orrico had the responsibility for establishing or promulgating Griffin's methods, procedures and standards for recording, allowing, granting, paying, disallowing, rejecting or resolving claims; for canceling any of its service contracts; and for refunding any money paid by purchasers of its service contracts upon cancellation of the contract. *Id.* at paragraph 15.

14. Orrico developed Griffin's initial marketing strategy. Giordano Dep. at 52. Orrico also regularly signed checks on behalf of the respondents, and sent and received letters and memoranda concerning the day-to-day operations of the firm. *See* CX 84 - CX 109.

15. In addition to Griffin and Great Plains, Orrico also owned United States Automobile Warranty Association ("USAWA"), a company formed with the intention of selling service contracts in a manner similar to Griffin. Orrico Dep. at 118. The USAWA solicitation materials were virtually identical to the Griffin solicitations. Compare CX 130 with CX 14 at 3-6. USAWA never sold any policies, however. Orrico Dep. at 118.

3. Alfonso S. Giordano

16. Alfonso S. Giordano was a director, vice president and treasurer of Griffin from 1985 through 1987, when he moved to Florida to become the vice president and a director of Great Plains. CX 11 at 2-5; CX 48; Giordano Dep. at 8-9. Giordano remained the vice president and a director of Great Plains from 1987 through early 1991, when he resigned to become the president of Metro General Insurance Agency, an insurance company related to Great Plains. Giordano Dep. at 214-17.

17. Giordano had no ownership interest in Griffin. Throughout the period of time relevant to the complaint, Giordano's compensation was based upon a set salary.

18. During his initial employment with Griffin from May 1985 through sometime in 1987, Giordano worked regularly at the firm's Cleveland office. Giordano Dep. at 7-9. He helped to organize the company and establish the formal, step-by-step administrative procedures for the office. *Id.* Giordano said his job included office manager functions, as well as "everything else that came along -- the administration part." Giordano Dep. at 206-07.

19. Giordano monitored the inventory of solicitation and contract forms used for mailings, and he had the authority to order the printing of those forms and to instruct Griffin personnel which forms to use in certain mailings. Giordano Dep. at 25-27; CX 56.

20. Giordano supervised the employees who worked in the Griffin computer room, including supervision of the receipt by Griffin of the computer tapes from the state departments of motor

vehicles. Giordano Dep. at 31-32. Giordano also directly supervised Christine Knowles, the office manager. Knowles Dep. at 7-8; Giordano Dep. at 206-07. For the first few months after she was hired in October 1986, Giordano supervised Knowles on a day to day basis, getting her familiar with the contracts Griffin sold, helping her understand how the firm handled calls from consumers who received Griffin solicitation materials, and "the basics of what we did on a day to day basis there with the calls, with the claims, with processing the contracts that came in." Knowles Dep. at 7-8.

21. Giordano routinely advised Griffin personnel of the policies and practices of the firm, "insofar as the solicitation and mailings." Giordano Dep. at 44-45. *See e.g.* CX 50; CX 54; CX 55; CX 57-CX 62; CX 64. Moreover, Giordano "put in writing" detailed instructions for the Griffin clerks to follow when they received a contract application from a consumer who filled out the application incorrectly or incompletely. Giordano Dep. at 96-97; CX 47.

22. Giordano was a signatory to various Griffin bank accounts, including payroll accounts, during the entire period of time he worked for Griffin in Cleveland and after he moved to Florida in 1987. Giordano Dep. at 14-16, 23-25, 157-61, 197-98; CX 76 - CX 82. He thus had the authority to sign paychecks to Orrico and even to himself. CX 76 at 1-2. As of January 1990, over two years after he left Griffin, Giordano still had signing authority for a Griffin checking account that was located in Florida. CX 72 at 9. Giordano stated that Griffin claims checks may have been paid from this account. Giordano Dep. at 197-98.

23. While in Cleveland, Giordano authorized the payment of all routine bills of Griffin. Giordano Dep. at 46-47.

24. Giordano was involved in redesigning both the Griffin solicitation materials and contract packages mailed to consumers. Giordano Dep. at 56-58, 147. He stated that his assistance was mostly limited to "format,, design and color,, rather than content." Giordano Dep. at 147. *See also* Sender Dep. at 13-14. One of his functions when he was hired was to make these materials "more attractive." Giordano Dep. at 56-58. In the solicitation materials, changes were made in the wording and content as well as in the format and design. Giordano made some of those content changes. *Id.* Giordano continued to review new Griffin solicitation materials and contracts after he moved to Florida as part of Great Plains. Giordano Dep. at 163-64.

25. Giordano was involved in the revision of United States Automobile Warranty Association solicitation materials as well. CX 132.

26. Commission Exhibits 31 and 34 are Giordano's handwritten copies of a solicitation letter and an agreement registration form sent to consumers, while CX 37 is his handwritten copy of the service contract. Giordano Dep. at 59-60, 66-68. Giordano stated that he did not "draft" these documents. Instead, he merely "wrote a great deal of things, simply because I have a very legible handwriting." Giordano Dep. at 59-62, 64-68.

27. Giordano signed various cover letters to the solicitation materials and other documents distributed by the respondents to consumers. CX 18-CX 20; CX 22.

28. Giordano, Orrico and Boughton, as a group, had the authority to change the costs of Griffin service contracts, and decided what the costs of the plans should be. Giordano Dep. at 37-39. When new costs went into effect, Giordano reviewed applications received under the old prices to determine what plans the firm would accept without asking the consumer for the additional fee. *Id.*; CX 58 at paragraph II.

29. Giordano interviewed people for various positions at Griffin, including the position of office manager. Giordano Dep. at 11-13, 206-07; Knowles Dep. at 6; CX 52. As part of a group decision with Orrico and Boughton, Giordano had the authority to hire employees and set the salary of "anybody who worked for the organization." Giordano Dep. at 10-11; Knowles Dep. at 6; CX 51. The same group would annually evaluate all employees "associated with" Griffin. Giordano Dep. at 190-91; CX 45-2 at paragraph i.

30. As part of "prudent management," Giordano conducted an "auditing function" of claims received in the mail from consumers, to ascertain the number of claims Griffin received each day. Giordano Dep. at 47-48; CX 63.

31. On a regular basis while he worked for Griffin in Cleveland, Giordano would receive a list of "claims to be paid today," along with the claims checks. He usually would countersign those checks with Boughton. Giordano Dep. at 48-49. Moreover, when he worked for Griffin and Great Plains, Giordano would make the determination of whether those firms had sufficient cash to release all of the Griffin claims that were processed to be paid on any particular day. He would then inform the Griffin claims manager of the amount of

claims that could be paid. Giordano Dep. at 115-16; 154-57; Canitia Dep. at 85-87.

32. Giordano created by hand detailed cost analyses of the Griffin contracts, CX 38 - CX 39, analyses of the number of plans sold for each make and model of automobile, CX 40 at 1-2, and analyses of the costs of claims from each make and model of auto. *Id.* at 3. *See* Giordano Dep. at 68-74, 98-101; Orrico Dep. at 39-40. At the request of either Boughton or Orrico, Giordano also created a detailed flow chart showing assumptions that could be made if various companies were formed. Giordano may have told these individuals how some of these relationships could be established. CX 46; Giordano Dep. at 101-05.

33. At the end of the negotiation process by Griffin to purchase Great Plains, Giordano audited Great Plains' books to determine if Great Plains' reserves, liabilities and assets "were what they purported to be." Giordano Dep. at 137-38. He signed the minute of the directors meeting in which Griffin authorized the purchase of Great Plains, CX 53, and he "was directly involved in going physically to Omaha, Nebraska to effect the transaction with the Department of Insurance of the State of Nebraska." Giordano Dep. at 227-30.

34. After Giordano began working for Great Plains, Universal Security Insurance Company, an independent Florida firm, approached Great Plains to administer an MBI program on its behalf, since Great Plains was familiar with these plans. Giordano Dep. at 209-14. Giordano "specifically" assisted Universal Security in creating their solicitation brochures, *Id.* at 213, which were similar to those used by both Great Plains and Griffin in both form and content. Compare CX 133 with CX 135 and CX 14 at 3-6. Griffin sent out solicitation brochures on their behalf, but less than 200 service contracts were sold by that company. Orrico Dep. at 119-20.

35. From 1988 through at least May 1992, Giordano also was vice president and a director of American Southeastern Warranty Association ("ASWA"), a Florida company that, like Griffin, sold automobile service contracts through the mail. CX 11 at 2-5. *See also* CX 136; CX 137. Giordano had no ownership interest in ASWA. In July 1984, Colleen Orrico, wife of Gennaro Orrico, purchased a 50 percent ownership interest in ASWA. Great Plains purchased the other 50 percent interest in 1988, after Griffin acquired

it. CX 11 at 6; Orrico Dep. at 112-118. ASWA limited its sales to Florida residents. CX 11 at 6.

B. The Respondents' Method of Sales

36. At all times relevant to the complaint in this matter, the respondents have maintained a substantial course of business in or affecting commerce, as "commerce" is defined by the Federal Trade Commission Act. Respondents' Answer to Complaint at paragraph 3.

37. The respondents sent promotional materials and direct solicitations for their service contracts to consumers through the mail. Respondents' Answer to Complaint at paragraph 4; Orrico Dep. at 15.

38. The solicitation materials which the respondents mailed to consumers typically consisted of a cover letter, a descriptive brochure, and an "Agreement Registration" form. Commission Exhibit 14, which is a copy of Exhibit A to the complaint, is a representative sample of one of the respondents' solicitation packages. Orrico Dep. at 36-38; Giordano Dep. at 142. The cover letter to the solicitation materials varied from time to time and often was tailored to reflect the manufacturer of the vehicle owned by the consumer. *See* CX 14; CX 15; CX 17-CX 19.

39. In order to prepare their solicitation mailing lists, the respondents obtained from state divisions of motor vehicles, typically by purchasing computer tapes, the names and addresses of consumers who recently purchased new automobiles, as well as the make and model of the automobile they purchased. Orrico Dep. at 15-16; Giordano Dep. at 31-32; Knowles Dep. at 11.

40. The respondents mailed solicitation packages virtually on a daily basis; between October 1986 and March 1988, the peak mailing was approximately 500,000 solicitations per month, Knowles Dep. at 11, or "millions and millions" of solicitations each year. Orrico Dep. at 39.

41. The respondents sold service contracts in at least the following 25 states: Alabama, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New York, North Carolina, Ohio, South Carolina, Tennessee, Texas, West Virginia and Wisconsin. CX 10 at 4(c).

42. The respondents could not sell service contracts throughout the country because many states have privacy laws which prohibit companies from obtaining information about state residents from the state government. Giordano Dep. at 42-43. In other states, including Florida, service contracts are considered a form of insurance, to be sold only by licensed insurance companies. Since Griffin was not an insurance company, the firm was prohibited from selling contracts in those states. *Id.*

43. In contesting law enforcement actions brought by at least two states, Maryland and Ohio, the respondents have maintained they were not engaged in the business of insurance. Instead, they claimed that their sale of service contracts was subject to federal regulatory jurisdiction under the Magnuson-Moss Warranty Act. *See e.g.* CX 139; CX 141.

44. The Griffin solicitation materials stated that the Vehicle Protection Plan was not an individual insurance program. CX 14 at 3; CX 17 at 3.

C. The Representations Made by the Respondents

45. Certain solicitation materials which the respondents mailed to consumers stated that purchasers of the Vehicle Protection Plan were "fully protected against high repair costs." CX 14 at 1. *See also* CX 15 at 1.

46. Certain brochures accompanying the solicitation materials stated that Griffin would pay "the cost of repair or replacement of covered parts on the major mechanical areas of your vehicle." CX 14 at 3. *See also* CX 17 at 3. Over 100 automobile components were listed as "covered" by the plan. CX 14 at 4; CX 17 at 4.

47. These solicitation brochures also stated that all service contracts were subject to a single deductible of \$25, which the owner paid only once during the lifetime of the plan. CX 14 at 4; CX 17 at 4. The solicitation materials did not mention any other deductible or other limitation on the amount Griffin would pay for the repair or replacement of a covered part. CX 14; CX 17.

48. Certain solicitation materials also stated that Griffin would pay consumers a rental car allowance of up to \$20 per day if, "due to the mechanical breakdown of a covered part eligible for payment, your vehicle has to be kept overnight at the repair facility." CX 14 at 4; CX 17 at 4.

49. Finally, certain solicitation materials stated that there was no limit to the number of claims a plan holder may submit, and that the owner should use the plan "as often as necessary." CX 14 at 3; CX 17 at 3. *See also* Respondents' Answer to Complaint at paragraph 9.

50. The solicitation materials noted that the coverage discussed was for informational purposes only, and that the service agreement detailed all conditions and terms of the plan. CX 14 at 3; CX 17 at 3. However, the service agreement was not sent to consumers as part of the solicitation materials. CX 14 at 6; CX 15 at 6; Knowles Dep. at 11.

51. The solicitation materials also noted that consumers would receive a "full refund within 60 days if not completely satisfied." CX 14 at 3; CX 17 at 3. The materials stated:

During the first 60 days of Plan ownership, you have the option to cancel the plan for a full refund, provided no claim has been filed. If you have filed a claim or have owned the plan for more than 60 days, cancellation refunds will be made under the Rule of 78's (The Sum of Digits Method) based on expiration of time or mileage, whichever is the lesser.

CX 14 at 3; CX 17 at 3.

52. Once consumers decided to purchase the Vehicle Protection Plan, they filled out the Agreement Registration Form. CX 14 at 5-6; CX 15 at 2. Consumers chose the term of the contract and the method of payment, and signed the registration form. *Id.* Coverage under the contract began upon the respondents' approval of the registration and processing of the payment. *Id.*; CX 17 at 2.

53. After the respondents approved the consumer's registration form, the purchaser received the service agreement, which listed in detail the terms of the contract. Commission Exhibit 23, which is a copy of Exhibit B to the Complaint, is a sample of the respondents' service agreement. Respondents' Answer to Complaint at paragraph 11. Other versions of the respondents' service agreements are included as CX 24 through CX 29. The relevant terms of these contracts are virtually identical.

54. A section of the respondents' service agreement, entitled "What Is Covered," states the following:

We agree to pay for the reasonable repair or replacement of parts/units within the components covered by this agreement. Such repair or replacement must have

arisen from the failure of defective parts/units, which failure may occur during the normal use of your vehicle.

In no event will our liability exceed the actual cash value of your vehicle prior to the time of the mechanical breakdown. The actual cash value will be determined by the published wholesale value of the vehicle. Replacement may be made with like kind and quality and depreciation or betterment applied.

CX 23 at 2-3. Similar, if not exact language was used in the respondents' other service agreements. *See* CX 24 - CX 29.

D. The Respondents' Acts and Practices

55. As a standard practice, the respondents applied a depreciation deduction to the value of all parts installed in a vehicle. CX 110-CX 119; Orrico Dep. at 70-72; Giordano Dep. at 117; Molzan Dep. at 43-44; Sender Dep. at 29-30; Stoudmire Dep. at 23; Canitia Dep. at 23-30.

56. The depreciation deduction typically amounted to one percent for each 1,000 miles driven, once the vehicle had 15,000 miles or more on the odometer. CX 111. In most instances, the depreciation deduction never exceeded 50 percent. CX 112; CX 115; CX 116; CX 119.

57. In describing how the rental car allowance would be calculated, the respondents' service agreements stated:

In computing the rental amount due you, we will consider only the actual working time on the repair of your vehicle, as follows: One day's transportation expense will be due for each 8 hours of flat rate time, provided that your vehicle must be retained overnight for the repair of covered parts eligible for payment.

This provision excludes:

1. Down time waiting for parts or any other delays beyond the control of the repair facility.

2. Down time for routine maintenance repairs. CX 23 at 4. *See also* CX 24 at 4; CX 25 at 6; CX 26 at 4; CX 27 at 3; CX 28 at 2; CX 29 at 2.

58. According to a former Griffin customer service representative, the following is a practical effect of the limitations on the rental car allowance, as set forth above. If a repair facility worked on a consumer's vehicle for three hours on Monday and three hours on

Tuesday, the consumer would not receive a rental car reimbursement, even though the car was kept in the repair facility overnight, because only six hours were spent on the repairs. Sender Dep. at 85-86.

59. Neither the respondents' solicitation materials nor their service agreements stated that the respondents had the right to cancel a service contract, for any reason whatsoever, once Griffin approved the consumer's agreement registration. *See* CX 14; CX 15; CX 17; CX 22 - CX 29.

60. The documents included as Commission Exhibits 120 and 121 show at least 12 consumers whose claims were denied and contracts were canceled either because the consumer had submitted too many claims, or for "underwriting" purposes. *See also* CX 12 at 5, 15.

61. Orrico stated that during 1990, someone from Great Plains instructed Griffin to cancel all unlimited mileage service contracts. Orrico Dep. at 84-87. According to Orrico, Griffin proceeded to cancel all of these unlimited mileage contracts unless the consumer stated that they wanted the contract to continue. Consumers who cashed their refund checks "went away." Orrico Dep. at 84-87.

62. Volume IV of the Commission's Trial Exhibits, CX 146, includes approximately 100 letters from the respondents to consumers, canceling the consumers' service contracts for either no stated reason or because the respondents purportedly were experiencing "continuing operating losses." *See also* CX 123.

63. Commission Exhibit 124 is a printout of contract holder information maintained on the respondents' computer system. Compare CX 124 with CX 12 at 4 through 22 (Griffin's response to Commission staff's access letter). This document shows three consumers whose contracts were canceled due to "End of Business."

64. Commission Exhibit 125 are printouts of summary information concerning Griffin contract cancellations. Those printouts state that during the period January 1, 1982 through December 31, 1988, 2,494 contracts were canceled. CX 125 at 1. During the period April 1, 1989 through May 31, 1989, 2,494 contracts were canceled. CX 125 at 3. Finally, the printouts state that on May 20, 1990, 8,499 contracts were canceled. CX 125 at 4.

65. According to the terms of the respondents' service contracts, consumers were required to obtain prior authorization for repairs by calling a toll-free number. *See, e.g.*, CX 23 at 7. When consumers called in for authorization of a repair, they were told to take their

vehicle to the repair facility of their choice, and to have the service manager call back the respondents for authorization. CX 10 at paragraph 7; Molzan Dep. at 25-26; Orrico Dep, at 54-56.

66. A number of former Griffin employees indicated that in many instances, consumers found it difficult, if not impossible, to get through to Griffin on the telephone. Molzan Dep. at 24-25, 53, 81-82; Stoudmire Dep. at 12-14, 60-64, 100-01; Cassidy Dep. at 18, 20-21; Knowles Dep. at 19-20; Biederman Dep. at 52, 56.

67. The respondents' telephone records indicate that in many months, thousands, and even tens of thousands, of telephone calls to the respondents' toll free numbers were not answered. *See* Danielson declaration, CX 142, at paragraph 10 and the attachments thereto. *See also* CX 143 and CX 145.

68. The Commission has received 1,278 complaints from consumers concerning the respondents' acts and practices. CX 142 at paragraph 5. Of those 1,278 complaints, at least 710 consumers complained about the difficulty in reaching Griffin by telephone, including at least 211 consumers who complained specifically that they had been unable to reach Griffin in order obtain prior authorization. *Id.* at paragraph 6.

69. In some of the complaints received by the Commission, consumers speak of calling the respondents numerous times in a day, for many days in a row, only to reach a busy signal or a tape recording stating that no one is in the office, or to be put on hold for periods of over one hour, only to be disconnected in the end. CX 142 at paragraph 6.

70. The respondents also received complaints, both orally and in writing, from consumers who could not get through on the telephone lines to obtain authorization. Stoudmire Dep. at 67-69; Molzan Dep. at 26-28, 56.

71. In numerous instances where prior authorization was not received, the respondents denied the claims of those consumers who attempted to reach the company but were unable to do so, thus failing to obtain the necessary authorization prior to the initiation of repairs. Canitia Dep. at 36-37; Cassidy Dep. at 27-28; Molzan Dep. at 26-28.

72. Volume V of the Commission's Trial Exhibits, CX 147, includes approximately 100 form letters from the respondents to consumers, denying the consumers' claims because they failed to obtain a pre-authorized claim number before sending in the claim. Each of these letters is followed by the consumer's written response,

stating in detail the difficulty the consumer experienced in obtaining such authorization over the telephone from the respondents. *See also* Molzan Dep. at 56; CX 142 at paragraph 12.

73. The Commission has received at least 100 consumer complaints about the delay in receiving from Griffin cancellation refunds which were due them, and at least 89 consumer complaints that the amount of their cancellation refund from Griffin was substantially less than what they had expected. CX 142 at paragraph 7.

II. DISCUSSION

In their solicitation materials, respondents stated that purchasers of the Vehicle Protection Plan were fully protected against high repair costs, and that the firm would pay the cost of repair or replacement of covered parts on the major mechanical areas of the consumer's vehicle. (F. 45, 46.) Over 100 automobile components were covered by the plan. (F. 46.) The solicitation brochure stated that all policies were subject to a single deductible of \$25, which the owner paid only once during the lifetime of the plan. (F. 47.)

Respondents made two other significant promises in their solicitations. They stated that they would pay consumers a rental car allowance of up to \$20 per day if, "due to the mechanical breakdown of a covered part eligible for payment, your vehicle has to be kept overnight at the repair facility." (F. 48.) And, they stated that there was no limit to the number of claims a plan holder may submit, and that the owner should use the plan "as often as necessary." (F. 49.)

Respondents did not pay the entire cost of replacing a covered part. They applied a depreciation deduction to the value of all parts installed in a vehicle. (F. 55.) This deduction was one percent for each 1,000 miles driven, once the vehicle had 15,000 miles or more on the odometer. (F. 56.)

Respondents' solicitation materials promised the rental car allowance whenever the vehicle had to be kept overnight at the repair facility. The service agreement limited this coverage to "the actual working time on the repair of your vehicle," excluding down time waiting for parts "or any other delays beyond the control of the repair facility." (F. 57.) Consumers received a rental car reimbursement only if the total repair time on the vehicle was eight hours or more, even if the repair took more than one day. (F. 58.)

Respondents' solicitation materials stated that there was no limit to the number of claims that a consumer may submit. In fact, the respondents denied claims and canceled policies solely on the grounds that a consumer had submitted too many claims in the past. (F. 60.)

Respondents' misrepresentations were likely to deceive consumers who were acting reasonably. *Cliffdale Associates*, 103 FTC 110, 164-65 (1984), *appeal dismissed sub nom, Koven v. FTC*, No. 84-5337 (11th Cir. October 10, 1984). There was no disclosure in respondents' solicitation materials that would put consumers on notice that they would be reimbursed for parts only on a depreciated basis. Nor were there any statements indicating a restriction on the rental car allowance or a limit on the number of claims that may be presented. Most of the misrepresentations were express and contrary to the terms of the contract.¹ The reasonable consumer would rely on the information presented in the solicitation materials and would therefore be deceived. *Cliffdale Associates*, 103 FTC at 178.

The misrepresentations were material to the purchasing decisions. A material claim is "likely to affect [consumers'] choice of, or conduct regarding, a product." *Id.* at 165. Express claims are presumptively material, *Id.* at 178-182. Respondents' claims went to what the consumers received for the money they paid. The misrepresentations therefore influenced consumers' decisions to purchase the service contracts.

Respondents breached their service contracts with many customers. The respondents unilaterally canceled service contracts, even though neither the solicitations nor the service agreements gave respondents that right. (F. 60-64.) Thousands of consumers' policies were canceled. (F. 64.) The respondents canceled service contracts that had an unlimited mileage term. (F. 61.)

Respondents also breached their service contracts by denying the claims of consumers who failed to obtain prior authorization for repairs, even though respondents hindered consumers' ability to obtain such authorization. (F. 66-70.) According to the terms of the service contract, respondents required consumers to obtain prior

¹ The explanation in the service agreement of the depreciation deduction on parts and the limitation on the rental car allowance does not negate the deceptions in the solicitation materials. When the first contact between a seller and a buyer occurs through a deceptive practice, the law may be violated even if the truth is subsequently made known to the purchaser. *Cliffdale Associates*, 103 FTC at 180.

authorization for repairs by calling a toll-free number. (F. 65.) Respondents made it difficult for many of these consumers to get through on the telephone lines to obtain the required authorization. Griffin employees' telephone records and consumer complaints confirm that many consumers could not get through to respondents in order to obtain prior authorization. (F. 66-70.)

The respondents failed to honor the terms of their contracts. They unilaterally canceled consumers' contracts without the express right to do so. Unilateral cancellation is a breach of contract. *Rochdale Village, Inc. v. Public Service Employees Union, Local No. 80*, 605 F.2d 1290, 1297 (2d Cir. 1979), citing *Restatement of Contracts* Sections 317, 318.

Respondents breached their contracts by establishing a condition precedent to the consumer's receipt of payment by requiring consumers to obtain an authorization from the firm prior to the initiation of repairs, and then wrongfully hindering the consumer's ability to perform that condition. Although a condition precedent must be performed before a contract can be enforced, where the promisor prevents the performance by the other party, the condition is negated. *District-Realty Title Ins. Corp. v. Ensmann*, 767 F.2d 1018, 1023 (D.C. Cir. 1985); *Ethyl Corp. v. United Steelworkers of America*, 768 F.2d 180, 185 (7th Cir.), cert. denied, 475 U.S. 1010 (1985); *Shear v. National Rifle Ass'n*, 606 F.2d 1251, 1254-55 (D.C. Cir. 1979). Consumers who fail to perform a condition precedent to a contractor's obligation may still recover performance under that contract when their ability to perform has been wrongfully hindered by the conduct of the other party. *Rohde v. Mass. Mutual Life Ins.*, 632 F.2d 667, 670 (6th Cir. 1980). By denying the claims from such consumers, respondents have breached their service contracts and deceived the public.

Respondents' acts were not only deceptive but unfair. To justify a finding of unfairness the injury to consumers: "must be substantial; it must not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and it must be an injury that consumers themselves could not reasonably have avoided." *Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1364 (11th Cir. 1988), cert. denied, 488 U.S. 1041 (1989).

The substantial consumer injury caused by respondents is "harmful in its net effects." *International Harvester Co.*, 104 FTC 949, 1061 (1984). The respondents' conduct produced no

countervailing benefits to consumers or competition. Rather, the respondents obtained an unfair competitive advantage by making claims of extended service coverage and then not providing such coverage. "The market forces that reward efficient competitors would be impaired if a seller is allowed to gain a competitive edge by unilaterally changing the bargains it has made." *Orkin Exterminating Co.*, 108 FTC 263, 365 (1986).

Respondents' breach of their service contracts was a unilateral act which consumers could not have avoided "through the exercise of consumer choice." *International Harvester*, 104 FTC at 1061. "Consumers may act to avoid injury before it occurs if they have reason to anticipate the impending harm and the means to avoid it, or they may seek to mitigate the damage afterward if they are aware of potential avenues toward that end." *Orkin*, 849 F.2d at 1365, quoting 108 FTC at 366.

In this case, consumers could not act to avoid injury before it occurred because they could not avoid it. While the Vehicle Protection Plan offered a 60 day money-back guarantee to all purchasers, this guarantee was limited only to those consumers who did not submit a claim during the 60 day period. For those consumers who did file a claim during that period, or who owned the plan for more than 60 days, refunds were based on the Rule of 78's.² (F. 51.)

Since all of the unfair practices in question became evident only after a claim was filed, this 60-day refund policy was of limited value to consumers in curing these problems. The only method of mitigating any damage would be to attempt to obtain a refund from the respondents. Most consumers had no available means fully to mitigate their damages once the respondents breached their contracts.³

In summary, respondents solicited business by promising that purchasers of their Vehicle Protection Plan were fully protected against high repair costs due to mechanical breakdown. (F. 45-54),

² The Rule of 78's is a mathematical formula used to refund unearned interest when an installment note is paid before maturity and in which the majority of the interest is assessed at the beginning of the loan. By using this type of refund calculation, the respondents limited the amount of refunds they would have to pay since the majority of the "value" of the VPP was consumed at the beginning of the contract, when the least number of claims would be submitted. (CX 126-1, 2); *Draper v. American Funding Ltd.*, 285 Cal. Rptr. 640, 642 n.2, 234 Cal. App. 3rd 345, 348 n.2 (C.A. 2nd Dist. 1991).

³ When consumers requested and received a refund, those payments were inadequate and delayed. (F. 73.)

